

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:03CR3056-1
)	
Plaintiff,)	
)	MEMORANDUM
vs.)	AND ORDER
)	
ANGEL ABARCA SANDOVAL,)	
)	
Defendant.)	

This matter is before the court on Defendant's notice of appeal (filing 149) and on the clerk's memorandum (filing 150) regarding such filing. The clerk is concerned that the notice of appeal is untimely, but notes that it may be treated as a motion for extension of time, for excusable neglect or good cause, under Fed. R. App. P. 4(b)(4).

Defendant's notice of appeal was filed on September 6, 2007, with respect to an memorandum and order that was entered 23 days earlier, on August 14, 2007 (filing 145). The order being appealed concerns a motion to vacate, set aside, or correct Defendant's sentence under 28 U.S.C. § 2255. Specifically, the order denied Defendant's application for a certificate of appealability related to the July 31, 2006 denial of his § 2255 motion. The time for filing a notice of appeal from such an order, assuming that it is appealable, is 60 days. *See* Fed. R. App. P. 4(a)(1)(B).

IT IS ORDERED that:

1. In response to the clerk's memo (filing 150), because Defendant's notice of appeal (filing 149) appears timely, no "excusable neglect" ruling will be made; and

2. The clerk of the court shall process Defendant's appeal and transmit a copy of this memorandum and order to the United States Court of Appeals for the Eighth Circuit.

September 7, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge